

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

Criminal Nos. 2:19-cr-47-3

AGHEE WILLIAM SMITH, II,
Defendant.

**DEFENDANT SMITH'S MOTION FOR LEAVE TO TAKE
PHOTOGRAPHS OF COURTROOM LAYOUT**

The defendant Aghee William Smith, II, respectfully moves for leave to take photographs of the courtroom layout to provide factual support for and to create a record allowing for meaningful appellate review of his motion for the Court to adopt courtroom procedures that comply with the Constitution.

As the Court knows, Mr. Smith has objected to the layout of the trial courtroom, arguing that the combination of distance, plexiglass, and face shields prevent jurors from observing the facial expression of witnesses in violation of Mr. Smith's rights under the Fifth and Sixth Amendments. To develop a factual record in support of this challenge, Mr. Smith asks that his attorneys be granted leave to take photographs of the interior of the courtroom so that the record will contain photographic evidence of the layout challenged by Mr. Smith. Mr. Smith's attorneys could schedule a time to take these photographs with the Court's courtroom deputy at a time that is convenient for court staff and when court is not otherwise in session.

Other courts have found that photographic evidence of the courtroom layout is helpful for resolving challenges like this. For example, *United States v. Villagomez*, 708 F. Supp. 2d 1105, 1108 (D. N. Mar. I., Apr. 22, 2010), the defendant raised a public trial challenge based on the court's practice of reserving certain seats in the courtroom for observing students. The district court's opinion on the issue noted that "[a]t oral arguments on the motion presently before the court, the parties agreed that

photographs showing the courtroom layout and the position of the reserved seats would be helpful to an understanding of the motion and this ruling.” *Id.* The photographs were made part of the record and the judge included some of them in his written opinion. *Id.*

Photographs of the courtroom layout are also essential to allowing for meaningful appellate review of challenges to the layout. For example, in *State v. Farrell-Quigle*, the Supreme Court of Idaho relied on “photographs of the courtroom layout in the record” to determine that the layout violated the defendant’s due process rights. 167 Idaho 773, 780, 477 P.3d 208, 215 (2020).

Because photographs of the courtroom layout are (1) the best evidence available to assess Mr. Smith’s constitutional challenge, (2) important to creating a record that would allow for meaningful appellate review of the question, and (3) can be obtained without undue hardship, we respectfully ask the Court to grant Mr. Smith’s counsel to take photographs of the trial courtroom as it will be configured for trial in this matter.

Respectfully submitted,

AGHEE WILLIAM SMITH, II

By: _____/s/ _____

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